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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/760,965 | 01/20/2004 | Steven W. Ek | STD 00.01 CIP2 CON | 1498 |
| 32047 | 7590 | 08/29/2007 | | |
| GROSSMAN, TUCKER, PERREAULT & PFLEGER, PLLC 55 SOUTH COMMERICAL STREET MANCHESTER, NH 03101 | | | EXAMINER PHILOGENE, PEDRO | |
| | | | ART UNIT 3733 | PAPER NUMBER |
| | | | MAIL DATE 08/29/2007 | DELIVERY MODE PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/760,965

Applicant(s)

EK, STEVEN W.

Examiner

Pedro Philogene

Art Unit

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 65,66 and 68-71 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 65,66,68-71 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 65,66,68 are rejected under 35 U.S.C. 102(e) as being anticipated by McDowell (6,171,340).

With respect to claims 65,66,68, McDowell discloses an implant (32) comprising a bone-facing distal surface (FIG. 4); a proximal surface (34) and a protrusion (38) formed by an extension of the bone-facing distal surface and the proximal surface; as best seen in FIGS. 1-6; wherein at least a portion of the protrusion is configured to extend over at least a portion of an un-excised articular surface proximate the implant. an outer perimeter generally disposed about the distal and the proximal surfaces; as best seen in FIG. 4, comprising at least two surfaces (one at each end of Fig. 4 and as best seen in FIG. 5) each having concentric arcuate shape with a common center and a first and at least a second generally opposing side surfaces, as best seen in FIG. 4, extending generally along a length of the implant between the at least two arcuate shaped surfaces, wherein the outer perimeter has a truncated circular shape; as best seen at 36).

Art Unit: 3733

Claims 69-71 are rejected under 35 U.S.C. 102(e) as being anticipated by Kubein-Meesenburg et al. (6,235,060).

With respect to claims 69-71, Kubein-Meesenburg et al disclose a method of mapping a surface contour of an articular surface comprising: establishing a working axis (x) extending from the articular surface; providing a first probe (2) having a first diameter; as best seen in FIGS 2, 2A, 3; measuring a height of at least one point of the articular surface generally on a first plane of the articular surface; providing a second probe (1) having a second diameter; and measuring a height of at least one point of the articular surface generally on second plane of the articular surface; as best seen in FIGS. 2, 2A 3; the diameter of the first probe is larger than the second diameter of the second plane; as best seen in FIG.2A; wherein arc-length of the articular surface along the first plane is greater than an arc-length of the articular surface along the second plane; as best seen in FIG.2A; and as set forth in column 3, lines 59-67; column 4, lines 1-39.

Allowable Subject Matter

The indicated allowability of claims 65, 66,68-71 is withdrawn in view of the newly discovered reference(s) to McDowell/Kubein-Meesenburg et al. Rejections based on the newly cited reference(s) follow. (see above).

Response to Amendment

Applicant's arguments with respect to claims 65-66,68-71 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Art Unit: 3733


A shortened statutory period for reply to this action is set to expire THREE MONTHS from the mailing date of this action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (571) 272-4716. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272 - 4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Pedro Philogene
August 21, 2007


PEDRO PHILOGENE
PRIMARY EXAMINER